IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6510 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VADGAMA STONE QUARRY - Petitioner(s)
Versus
GENERAL MANAGER & 2 - Respondent(s)

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Appearance :
MR PJ KANABAR for Petitioner(s) : 1, present
MR UDAY R BHATT, AGP for Respondent(s) : 1 – 3. present
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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 09/03/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. Facts for disposal of the present writ application

in nutshell are that the petitioner was granted provisional registration certificate by respondent no.1 – General Manager, District Industries Centre, Amreli on 23.9.92 and was also issued eligibility certificate on 28.7.94 for establishing an industry engaged in the work of stone crushing within the area of Katar, Taluka-Rajula. The petitioner was granted exemption from payment of sales-tax from 2.1.94 to 1.1.03 to the extent of Rs.1,87,465/-. The petitioner was accordingly granted exemption in payment of sales-tax accordingly for the years 1994-95 and 1995-96. The petitioner received an order dated 29.11.95, making exemption from payment of sales-tax instead of 4.1.94 to 4.7.94. The respondents thereafter cancelled the registration and exemption by exparte order. The petitioner challenged the aforesaid action of the respondents by preferring Special Civil Application No. 9421 of 1997. The matter was heard by a Division Bench and by order dated 24.2.98, the Division Bench observed that the petition stands withdrawn in view of the assurance given by the respondents that they would issue necessary notice to the petitioner, offer him an opportunity of hearing and would pass a fresh order. It appears that before the matter could be re-heard after notice and opportunity

of hearing to the petitioner, order dated 14.7.98 came to be passed by Assistant Sales-Tax Commissioner, Circle 33, Amreli, that the petitioner was required to make payment of Rs. 1,34,214/-. The petitioner being aggrieved by the said recovery-cum-demand notice is again before this Court.

2. Mr. P.J. Kanabar, learned counsel for the petitioner submits that the recovery-cum-demand notice dated 14.7.98 was issued in consequence to an order which was later on set aside or withdrawn by the respondents. According to him, fresh opportunity was given to the petitioner and final order into the eligibility and entitlement of the petitioner came to be passed on 17.9.98. He submits that before the final orders could be passed into the entitlement and eligibility of the petitioner, notice for recovery could not be issued.

3. Mr. Uday R.Bhatt, learned AGP, though tried to support the order in question, but in our considered opinion, the recovery-cum-demand notice dated 14.7.98 cannot be allowed to stand as it stands on a foundation which is lost. We hereby quash the recovery-cum-demand notice dated 14.7.98. It is also to be noted that the order dated 17.9.98 has also been quashed by this Court in Special Civil Application No. 9314 of

1998 on 22.12.99. Under the circumstances, no recovery can be made from the the petitioner. The petition deserves to be allowed. It is accordingly allowed. Rule is made absolute. No costs.

4. Any amount recovered by the respondents in view of the recovery-cum-demand notice dated 14.7.98 be refunded by the department to the petitioner. The petitioner, however, would be at liberty to claim interest from the respondents on the said amount. It would be for the authorities to decide the question in accordance with law.

[R.S. GARG, J.]

[BANKIM N. MEHTA, J.]

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